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SERVICE DATE – MAY 31, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-933X

DAKOTA, MISSOURI VALLEY & WESTERN RAILROAD, INC.–
ABANDONMENT EXEMPTION–IN BURLEIGH AND EMMONS COUNTIES, ND

Decided: May 26, 2005

Dakota, Missouri Valley & Western Railroad, Inc. (DMVW), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon an approximately 32.3-mile portion of the McKenzie-Linton Line between milepost 13.0, a point south of Moffitt, Burleigh County, ND, and milepost 45.3, in Linton, Emmons County, ND. Notice of the exemption was served and published in the Federal Register on April 29, 2005 (70 FR 22390). The exemption is scheduled to become effective on May 31, 2005.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on May 6, 2005. In the EA, SEA notes that the Natural Resources Conservation Service (NRCS) submitted comments regarding possible salvage operations. NRCS recommends, and SEA agrees, that DMVW shall, prior to beginning any salvage activities, consult with NRCS and during salvage activities shall: (1) to the extent possible, maintain all natural drainage patterns and return land use to the original land use cover; (2) avoid placing spoil in wetlands or natural watercourses; and (3) employ erosion control measures during all periods of road bed removal activities. Also, in the EA, SEA notes that the North Dakota Department of Health, Environmental Health Section (NDDH) submitted comments stating that environmental impacts from the proposed abandonment would be minor and could be controlled by proper construction methods. Therefore, NDDH recommends, and SEA agrees, that DMVW shall: (1) follow Best Management Practices during salvage activities to prevent dirt, construction debris, and waste material from entering a storm drainage system or water body; (2) report any releases of petroleum products, hazardous materials, or chemicals that may impact human health or the environment, which are known to have occurred in the past or are discovered in the project area during abandonment and salvage operations to NDDH; (3) prior to beginning salvage activities, consult with local officials regarding local storm water management considerations and consult with NDDH regarding its requirements for storm water drainage activities; and (4) during salvage activities, take care to avoid spills of any materials that may have an adverse effect on groundwater quality and immediately report all spills to NDDH and perform appropriate remedial actions.

SEA also states in the EA that the U.S. Fish and Wildlife Service (FWS) is concerned regarding any possible salvage operations in wetlands under its jurisdiction. Therefore, SEA recommends that DMVW shall, prior to beginning salvage activities, consult with FWS regarding FWS' requirements for conducting salvage activities that may affect areas under its jurisdiction. In addition, as agreed to by DMVW, salvage activities shall be conducted within the right-of-way using existing access routes. SEA further notes in the EA that the U.S. Army Corps of Engineers, Omaha District (Corps) states that heavy rains in the project area could cause runoff in excess of storm sewer and local drainage way capacities resulting in a flood hazard. Therefore, SEA recommends that DMVW be required to consult with the appropriate county floodplain administrators and the Corps regarding the possible flood hazards that could be incurred by salvage activities, and the development of measures to mitigate any such hazards. In addition, the Corps states that final project plans should be sent to the Bismarck Regulatory Office (Bismarck-Corps) to determine permitting requirements. Therefore, SEA recommends that, prior to beginning salvage activities, DMVW shall submit final salvage plans to and consult with Bismarck-Corps regarding its requirements. SEA further notes in the EA that the National Geodetic Survey (NGS) has identified 18 geodetic station makers that may be affected by the proposed abandonment. Therefore, SEA recommends that DMVW provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the geodetic station markers so that plans can be made for their relocation. Finally, SEA notes in the EA that State Historical Society of North Dakota (SHPO) has not yet completed its evaluation of the potential impact of the project on historic resources. Therefore, SEA recommends that DMVW retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line that are 50 years old and older, until the completion of the section 106 process of the National Historic Preservation Act (NHPA), 16 U.S.C. 470f.

Comments to the EA were due by May 20, 2005. No comments were received by the due date. Accordingly, the environmental conditions recommended by SEA in the EA will be imposed.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption of the abandonment of the line described above is subject to the conditions that DMVW shall: (1) prior to beginning any salvage activities, consult with NRCS and during salvage activities: (a) to the extent possible, maintain all natural drainage patterns and return land use to the original land use cover; (b) avoid placing spoil in wetlands or natural watercourses; and (c) employ erosion control measures during all periods of road bed removal activities; (2) follow the above specified recommendations based on comments received from NDDH

regarding the environmental impacts from the proposed abandonment; (3) consult with FWS prior to beginning salvage activities regarding FWS' requirements for conducting salvage activities that may affect areas under its jurisdiction; and as agreed to by DMVW, conduct salvage activities within the right-of-way using existing access routes; (4) consult with the appropriate county floodplain administrators and Corps regarding the possible flood hazards that could be incurred by salvage activities, and the development of measures to mitigate any such hazards; (5) prior to beginning salvage activities, submit final salvage plans to and consult with Bismarck-Corps regarding its requirements; (6) provide NGS with at least 90 days' notice prior to initiation of any salvage operations that may disturb or destroy the geodetic station markers so that plans can be made for their relocation; and (7) retain its interest in and take no steps to alter the historic integrity of the line and all sites and structures on the line that are 50 years old and older, until the completion of the section 106 process of NHPA.

3. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams
Secretary